

Hennefeld, Daniel - SOL

From: Stewart, Ryan C. <RStewart@gibsondunn.com>
Sent: Friday, October 14, 2022 11:03 PM
To: Jaklevic, David M - SOL; Ahmad, Zainab; Denerstein, Mylan L.
Cc: Hennefeld, Daniel - SOL; Acosta, Jing - SOL; Wu, Emily - SOL; Ellis, Beau - SOL; Seidelman, Catherine - SOL; Smith, Christopher M - SOL; Thomas, Latasha - SOL; jschwartz
Subject: RE: Amazon - Selection of Additional Facilities and Response to Subpoena Request Nos. 62, 63, 64, 67, and 72

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Dave: I write in response to your October 12 letter correspondence in which you responded to our September 21 proposal related to the scope of site-level discovery from “sibling facilities.”

Specifically, Amazon agreed to collect and produce responsive documents from four “sibling facilities” selected by OSHA. Your October 12 letter proposes that Amazon do so from twelve “sibling facilities.” We appreciate that we are making progress on this issue. However, we maintain that producing responsive documents to these requests (Nos. 64, 67, and 72), at the site level, for twelve *additional* facilities is onerous and inconsistent with OSHA’s obligation to obtain information with minimum burden upon employers. 29 U.S.C § 657(d).

The process of collecting these documents is time consuming, burdensome, and disruptive. Potentially responsive documents are spread out across multiple potential custodians in multiple positions at *each* facility. Sites also have different storage locations for the various types of responsive documents, requiring manual collection from various electronic drives, devices, and email files. As you know, collecting and producing these documents with respect to just the six inspected facilities took many weeks, notwithstanding that it was a priority of yours and, therefore, a priority of our collection and review efforts. Your request for twelve *additional* facilities triples the burden on Amazon.

Taking such a broad approach will also make it more difficult for Amazon to collect and provide the documents as promptly as you would like them in light of the six-month statute of limitations. We believe it is important that we reach compromises on these time-consuming requests that permit Amazon to meet our agreements with respect to diligently producing documents responsive to over 500 OSHA document requests, the nineteen OSHA deposition subpoenas noticed this month, and ongoing reinspection activities at multiple sites—expectations that your letter makes clear should not be affected by this additional effort.

Still, we take in good faith your representation that an additional four facilities will not be sufficient for your investigative purposes. Consistent with its commitment to cooperating, within reason, in your investigation, Amazon will agree to undertake the time and expense of collecting and producing documents responsive to these requests from an additional eight facilities, double Amazon’s original agreement. Assuming you agree to this approach, please let us know which eight facilities OSHA prefers.

Lastly, I note that we are not in a position to provide a production schedule today for these new facilities. We are happy to provide a production schedule specific to these sibling facility requests as soon as practicable. The nature of this site specific exercise, however, means that we must undertake the process of identifying, contacting, and conferring with each of the potentially relevant custodians at each site, locating responsive

documents, determining the anticipated scope of responsive documents, and determining how onerous and time consuming it will be for each such custodian to collect and provide the responsive documents. That process cannot reasonably occur within forty-eight hours as requested in your October 12 letter. Amazon will, of course, begin productions on a rolling basis as responsive documents are identified, reviewed, and processed.

Best,
Ryan

Ryan Stewart

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From: Jaklevic, David M - SOL <Jaklevic.David.M@dol.gov>

Sent: Wednesday, October 12, 2022 4:22 PM

To: Ahmad, Zainab <ZAhmad@gibsondunn.com>; Stewart, Ryan C. <RStewart@gibsondunn.com>; Denerstein, Mylan L. <MDenerstein@gibsondunn.com>

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[WARNING: External Email]

Counsel – please find attached correspondence concerning Amazon’s response to OSHA Subpoena Request Nos. 62, 63, 64, 67, and 72, and Amazon’s proposal for OSHA to select four additional facilities from which Amazon will collect and produce documents and data. Please feel free to contact me with any questions.

Thanks,

David M. Jaklevic

Senior Trial Attorney

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